

**STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF COMPLIANCE & INSPECTION**

IN RE: John Pereira

FILE NO.: OCI-FW-22-28

NOTICE OF VIOLATION

A. INTRODUCTION

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, (“R.I. Gen. Laws”) you are hereby notified that the Director of the Rhode Island Department of Environmental Management (“Director” of “RIDEM”) has reasonable grounds to believe that the above-named party (“Respondent”) has violated certain statutes and/or administrative regulations under RIDEM's jurisdiction.

B. ADMINISTRATIVE HISTORY

On 8 March 2022, RIDEM inspected the property that is the subject of this Notice of Violation (“NOV”), and RIDEM’s inspector spoke with Respondent the following day. The inspector advised Respondent that the activities RIDEM observed were occurring within freshwater wetlands RIDEM’s inspector also advised Respondent of this fact during inspections of the property on 11 March 2022 and 7 April 2022. During the 7 April 2022 inspection, RIDEM’s inspector observed ongoing activities within freshwater wetlands and issued a written Order to Cease and Desist (“C&D”) to Respondent, which Respondent refused to sign. On 12 May 2022, RIDEM issued a Notice of Intent to Enforce (“NIE”) to Respondent for the violations that are the subject of the NOV. The NIE required specific actions to correct the violations by 30 September 2022. On 9 June 2022, RIDEM’s inspector observed a “for sale by owner” sign for the Property. On 2 July 2022, RIDEM received a letter from Respondent in response to the NIE. Respondent agreed to comply with the NIE but stated that he would not be able to do so before September 30, 2022. Respondent also requested a meeting with RIDEM to discuss reasonable alternatives to resolve the matter. RIDEM provided Respondent with information on how to request a meeting. As of the date of the NOV, Respondent has not contacted RIDEM to request a meeting.

C. FACTS

- (1) The property is located approximately 1,300 feet northeast of the intersection of Black Hut Road and Cherry Farm Road at House Number 145 Black Hut Road, Assessor’s Plat 126, Lot 27 in Burrillville, Rhode Island (“Property”).
- (2) Respondent owns the Property. Respondent acquired the Property on 10 September 2021.

- (3) On 8 March 2022, 11 March 2022 and 7 April 2022, RIDEM inspected the Property and spoke with Respondent at the time of each inspection or immediately after each inspection. The inspections revealed the following:
- (a) Clearing, stumping, filling (in the form of at least soil material, gravel material, tree debris, and rocks), grading, excavating, directing water into and out of, and creating surface disturbance within at least Swamp and Floodplain. These activities resulted in the alteration of approximately 23,500 square feet of freshwater wetland.
 - (b) Clearing, stumping, filling (in the form of at least soil material, gravel material, tree debris, and rocks), grading, excavating, building a rock retaining wall and creating surface disturbance within Perimeter Wetland (“PW”) and Floodplain. These activities resulted in the alteration of approximately 12,500 square feet of freshwater wetland.

RIDEM’s inspector advised Respondent at the time of or immediately after each inspection of the presence of the freshwater wetlands on the Property.

- (4) During the 7 April 2022 inspection, RIDEM’s inspector observed that additional activities were undertaken within the Swamp and PW since the 11 March 2022 inspection. RIDEM’s inspector issued a C&D to Respondent at the time of the inspection, which Respondent refused to sign.
- (5) The activities described in subsection C (3) above were not exempt in accordance with Rhode Island’s *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act* (250-RICR-150-15-1) (“FWW Rules”).
- (6) Respondent did not receive a permit from RIDEM to alter the freshwater wetlands on the Property in the areas described in subsection C (3) above.

D. VIOLATION

Based on the foregoing facts, the Director has reasonable grounds to believe that you have violated the following statutes and/or regulations:

- (1) **R.I. Gen. Laws Section 2-1-21** – prohibiting activities which may alter freshwater wetlands without a permit from RIDEM.
- (2) **FWW Rules, Part 1.5(A)(1)** – prohibiting activities which may alter freshwater wetlands without a permit from RIDEM, unless the activity is exempt in accordance with Part 1.6.

E. ORDER

Based upon the violations alleged above and pursuant to R.I. Gen. Laws Section 42-17.1-2(21), you are hereby ORDERED to:

- (1) **IMMEDIATELY** cease and desist from any further alteration of the above-described freshwater wetlands.
- (2) Restore all freshwater wetlands in accordance with the restoration requirements set forth below.

RESTORATION REQUIREMENTS

- (a) If not already completed, immediately install (in a proper manner) appropriate biodegradable soil erosion/sediment (“SES”) controls (e.g., staked haybales and/or staked-in straw wattles/coir logs/coconut fiber logs), to the greatest degree possible, along the outside limits of all altered/disturbed freshwater wetlands, between all disturbed surfaces and any adjacent undisturbed wetland areas. In those portions of the disturbed/alterd Swamp feature where deep surface water is present, the SES controls must be installed in locations where the ground substrate allows the top surface of the controls to be above the existing surface water elevation. **RIDEM must inspect and approve the installed SES controls prior to Respondent proceeding to the next restoration step.** In addition, as restoration progresses, SES controls must also be installed along the outer edge (limits) of the Swamp before proceeding with the restoration of the PW. The SES controls must be regularly inspected and properly and continually maintained (and replaced, if necessary) by Respondent or his agents prior to, during, and following the completion of the required wetland restoration, and until such time that all surrounding areas are properly stabilized. **At the discretion and direction of RIDEM, additional SES controls must be installed on-site, as deemed necessary, to protect all freshwater wetlands.**
- (b) Remove all unauthorized fill material (including but not limited to soil material, gravel material, cut tree debris and rocks/boulders) from the Swamp at the direction of RIDEM. Fill must be removed down to the original grade of the Swamp, to match the elevations of the adjacent undisturbed wetlands. If necessary, and as directed by RIDEM, proper (fine) grading must be undertaken to re-establish appropriate, pre-alteration wetland microtopography within the affected portions of the Swamp (to match conditions present in adjacent undisturbed Swamp). **Prior to continuing with the activities outlined in subsection (e) below, all areas of concern where fill has been removed must first be inspected by RIDEM, to confirm that the correct restoration grades have been achieved and an adequate surface substrate material is present.** If the original wetland (organic/hydric) surface soil is not present within the Swamp following fill removal, then at the discretion and direction of RIDEM, the following procedure must be utilized:

- (i) An additional 6 inches of soil material must be excavated from the affected portions of the Swamp (below original grade) to ensure that the proper hydrology is achieved at the completion of the restoration work.
- (ii) A minimum of 6 inches of high-organic plantable soil must then be applied throughout the affected (excavated/restored) portions of the Swamp to achieve the final desired wetland surface grade, which should match the elevations of any adjacent remaining undisturbed wetland.

All removed, non-native fill materials must be deposited in an appropriate upland location, outside of all freshwater wetlands.

- (c) With the exception of the original portion of the channel situated to the north of the dwelling on the Property, which was in place when the Respondent acquired ownership of the Property, backfill all created channels, swales, and other excavated areas within the Swamp and PW to return all surfaces to pre-alteration conditions, using like soil material that was excavated from the areas of concern, re-establishing the original elevations that were present in the affected portions of the Swamp and PW prior to the unauthorized alterations (to match the grades of any adjacent undisturbed wetland areas). If necessary, and as directed by RIDEM, proper (fine) grading must be undertaken to re-establish appropriate, pre-alteration wetland microtopography within the affected portions of the Swamp (to match conditions present in adjacent undisturbed Swamp). **Prior to continuing with the activities outlined in subsection (e) below, all locations where backfilling has occurred must first be inspected by RIDEM to confirm that the correct restoration grades have been achieved and an adequate surface substrate material is present.** If an adequate amount of appropriate excavated material is not available, as needed, and at the discretion of RIDEM, an acceptable high-organic plantable soil may be utilized to backfill certain excavated areas within the Swamp.
- (d) All restoration work within the Swamp must be undertaken during an acceptable “low-flow” period (generally July 1 - October 31), during which surface water in the subject wetland is sufficiently low to allow for the required restoration.
- (e) Immediately following fill removal and backfilling operations, all resulting disturbed surface areas within the restored Swamp must be immediately seeded with an appropriate wetland seed mixture. All disturbed surface areas resulting from backfilled channels, swales, and excavated areas within the affected portions of the PW must also be immediately seeded with an appropriate wildlife conservation seed mixture. A thick mat of spread straw mulch, which is free of any contaminants that could promote the spread of invasive plant species, must also be applied over all the disturbed surfaces within the affected portions of the Swamp and PW, to provide immediate surface stabilization. A line of new SES controls must also be installed at the

outer (landward) limits of the restored Swamp before proceeding with the remaining restoration of the PW.

- (f) Remove all unauthorized fill material (including, but not limited to, at least soil material, gravel material, cut tree debris and rocks/boulders) from the affected portions of the PW, including the unauthorized rock retaining wall. Fill must be removed down to original grade, to match the elevations of the adjacent undisturbed wetlands. All disturbed surface areas resulting from fill removal within the affected portions of the PW must be covered, if necessary (**at the discretion and direction of RIDEM**), with plantable soil (4 inches minimum) and seeded with an appropriate wildlife conservation seed mixture. A thick mat of spread straw mulch, which is free of any contaminants that could promote the spread of invasive plant species, must also be applied over all the disturbed surfaces within the restored subject freshwater wetlands to provide immediate stabilization. Erosion control matting/jute mesh must be installed/applied in steeply sloping areas to further prevent erosion.
- (g) Plant trees and shrubs within those portions of the altered/restored Swamp, which are not inundated with surface water, **at the direction of RIDEM**. The trees and shrubs to be planted in these locations **must** be obtained from nursery stock that has been raised in hydric conditions. If necessary, to improve survivability, required tree and shrub plantings may be installed within small, raised mounds (slightly elevated only) of high-organic plantable soil material (only). Trees and shrubs must be installed in the Swamp as follows:
 - (i) Balled and burlapped or transplanted tree species must be planted in an interspersed fashion, 10 feet on center, at least 4 feet tall after planting, throughout the area defined above. Tree species must include an equal distribution of at least 3 of the following selections:

Atlantic white cedar, *Chamaecyparis thyoides*

Red maple, *Acer rubrum*

Silver maple, *Acer saccharinum*

Black gum, *Nyssa sylvatica*

Green ash, *Fraxinus pennsylvanica*

Swamp white oak, *Quercus bicolor*

Pin oak, *Quercus palustris*

American elm (disease-resistant variety), *Ulmus americana*

Weeping willow, *Salix babylonica*

Black willow, *Salix nigra*

Yellow birch, *Betula allegheniensis*

- (ii) Balled and burlapped, potted, or transplanted shrub species must be planted in an interspersed fashion 5 feet on center, at least 3 feet tall after planting, throughout the area defined above. Shrub species must include an equal distribution of at least 4 of the following selections:

Red osier dogwood, *Cornus stolonifera*
Elderberry, *Sambucus canadensis*
Northern arrowwood, *Viburnum recognitum*
Winterberry, *Ilex verticillata*
Highbush blueberry, *Vaccinium corymbosum*
Spicebush, *Lindera benzoin*
Swamp azalea, *Rhododendron viscosum*
Speckled alder, *Alnus rugosa*
Smooth alder, *Alnus serrulata*
Red chokeberry, *Aronia arbutifolia*
Buttonbush, *Cephalanthus occidentalis*
Maleberry, *Lyonia lingustrina*
Swamp Rose, *Rosa palustris*

- (h) Plant trees and shrubs within previously vegetated portions of the altered/restored PW, **at the direction of RIDEM**, as follows:

- (i) Balled and burlapped or transplanted tree species must be planted in an interspersed fashion, 10 feet on center, at least 4 feet tall after planting, throughout the areas defined above. Tree species must include an equal distribution of at least 3 of the following selections:

White pine, *Pinus strobus*
Northern white cedar, *Thuja occidentalis*
Red maple, *Acer rubrum*
Box elder (ashleaf maple), *Acer negundo*
White ash, *Fraxinus americana*
White oak, *Quercus alba*
Northern red oak, *Quercus rubra*
Sassafras, *Sassafras albidum*
Gray birch, *Betula populifolia*
Black birch, *Betula lenta*
American beech, *Fagus grandifolia*

- (ii) Balled and burlapped, potted, or transplanted shrub species must be planted in an interspersed fashion 5 feet on center, at least 3 feet tall after planting, throughout the area defined above. Shrub species must include an equal distribution of at least 4 of the following selections:

Mountain laurel, *Kalmia latifolia*
Giant rhododendron, *Rhododendron maximum* (shaded areas only)
Gray (stiff, red panicle) dogwood, *Cornus foemina racemosa*
Silky dogwood, *Cornus amomum*
Arrowwood (southern), *Viburnum dentatum*
American cranberrybush, *Viburnum trilobum*
Mapleleaf viburnum, *Viburnum acerifolium*
Inkberry, *Ilex glabra*
Highbush blueberry, *Vaccinium corymbosum*
Lowbush blueberry, *Vaccinium angustifolium*
Sweet pepperbush, *Clethra alnifolia*
Black chokeberry, *Aronia melanocarpa*
Witchhazel, *Hamamelis virginiana*

(iii) In addition, balled and burlapped or transplanted evergreen screening tree species must be planted in a straight line, 8 feet on-center (apart), at least 5 feet tall after planting, along the outer (landward) edge of the restored PW, or (in certain locations only) at the limit of disturbance line that was present at the time Respondent acquired ownership of the Property, **as directed by RIDEM**. The tree species to be utilized for this screening line (described above) must include at least 2 of the following selections:

Northern white cedar, *Thuja occidentalis*
Eastern hemlock (disease-resistant variety), *Tsuga canadensis*
White pine, *Pinus strobus*
White spruce, *Picea glauca*

- (i) If any of the required plantings fail to survive at least 2 full years from the time they have been planted, Respondent shall be responsible for replanting and maintaining the same plant species until such time that survival is maintained over 2 full years.
- (j) All restored freshwater wetlands must be allowed to revert to a natural wild condition. Aside from those activities considered exempt under Part 3.6 of the FWW Rules **no future clearing, mowing, cutting, trimming, or other alterations are authorized in any freshwater wetlands on the Property without first obtaining a valid permit from RIDEM**.
- (k) All wetland restoration requirements described above must be completed by **30 September 2023**.
- (l) Respondent must also retain the services of a qualified professional environment (wetland) consultant who has substantial prior experience in wetland restoration projects of this character and scope. The wetland professional/consultant must oversee and supervise all aspects of the required wetland restoration (i.e., all activities associated with the above restoration

requirements), to ensure the proper restoration of all freshwater wetlands. The consultant must perform regular inspections and provide to RIDEM weekly progress reports (via e-mail correspondence, followed by hard copy mailing) while the required wetland restoration is taking place. Following completed wetland restoration, the consultant must perform quarterly (4 times/year) monitoring inspections, over a period of 2 years, documenting the progress of the re-establishment of the natural wetland features/environment, as well as the survival of installed restoration plantings (and the potential need for replacement), and provide a monitoring report to RIDEM for each inspection.

F. PENALTY

- (1) Pursuant to R.I. Gen. Laws Section 42-17.6-2, the following administrative penalty, as more specifically described in the attached penalty summary and worksheets, is hereby ASSESSED, jointly and severally, against each named respondent:

\$20,000

- (2) The proposed administrative penalty is calculated pursuant to Rhode Island's *Rules and Regulations for Assessment of Administrative Penalties* (250-RICR-130-00-1) ("Penalty Regulations") and must be paid to RIDEM within 30 days of your receipt of the NOV. Penalty payments shall be by one of two methods:

- (a) By certified check, cashier's check, or money order made payable to the **General Treasury – Water and Air Protection Program** and forwarded to:

Administrator, RIDEM Office of Compliance and Inspection
235 Promenade Street, Suite 220
Providence, RI 02908-5767.

- (b) By wire transfer in accordance with instructions provided by RIDEM.

- (3) Penalties assessed against Respondent in the NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.

G. RIGHT TO ADMINISTRATIVE HEARING

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before RIDEM's Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through F above. All requests for hearing MUST:

- (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b).

- (b) Be **RECEIVED** by RIDEM's Administrative Adjudication Division, at the following address, within 20 days of your receipt of the NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
RIDEM - Administrative Adjudication Division
235 Promenade Street, Suite 350
Providence, RI 02908-5767.

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b).
- (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Part 1.7(B) of Rhode Island's *Rules and Regulations for the Administrative Adjudication Division* (250-RICR-10-00-1).
- (2) A copy of each request for hearing must also be forwarded to:

Tricia Quest, Esquire
RIDEM - Office of Legal Services
235 Promenade Street, Suite 425
Providence, RI 02908-5767

- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before RIDEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner regarding any violation set forth herein, then the NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (vi) and 42-17.6-4(b) and (c).
- (5) Failure to comply with the NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) An original signed copy of the NOV is being forwarded to the Town of Burrillville, Rhode Island wherein the Property is located, to be recorded in the Office of Land Evidence Records pursuant to R.I. Gen. Laws Chapter 34-13 and Section 2-1-24, as is or as amended.

- (7) The NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Tricia Quest of RIDEM's Office of Legal Services at (401) 222-6607, ext. 2772408 or at tricia.quest@dem.ri.gov. All other inquiries should be directed to David E. Chopy of RIDEM's Office of Compliance and Inspection at (401) 222-1360, ext. 2777400 or at david.chopy@dem.ri.gov.

Please be advised that any such inquiries do not postpone, eliminate, or otherwise extend the need for a timely submittal of a written request for a hearing, as described in Section G above.

FOR THE DIRECTOR

By: _____
David E. Chopy, Administrator
Office of Compliance and Inspection

Dated: _____

CERTIFICATION

I hereby certify that on the _____ day of _____
the within Notice of Violation was forwarded to:

John Pereira
145 Black Hut Road
Harrisville, RI 02830

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: Freshwater Wetlands
 File No.: OCI-FW-22-28
 Respondent: John Pereira

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
D (1) and D (2) – Wetland Alterations to the Swamp and Floodplain – Fact C(3)(a)	Type I <i>(\$10,000 Max. Penalty) *</i>	Major	\$10,000	1 violation	\$10,000
D (1) and D (2) – Wetland Alterations to the PW and Floodplain – Fact C(3)(b)	Type I <i>(\$10,000 Max. Penalty) *</i>	Major	\$10,000	1 violation	\$10,000
SUB-TOTAL					\$20,000

*Maximum Penalties represent the maximum penalty amounts per violation.

ECONOMIC BENEFIT FROM NONCOMPLIANCE

COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT COMPLY. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:

- THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE, OR
- THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.

A review of the record in this matter has revealed that Respondent has either enjoyed no identifiable benefit from the noncompliance alleged in this enforcement action or that the amount of economic benefit that may have resulted cannot be quantified.

COST RECOVERY

ADDITIONAL OR EXTRAORDINARY COSTS INCURRED BY THE DIRECTOR DURING THE INVESTIGATION, ENFORCEMENT AND RESOLUTION OF AN ENFORCEMENT ACTION (EXCLUDING NON-OVERTIME PERSONNEL COSTS), FOR WHICH THE STATE IS NOT OTHERWISE REIMBURSED.

A review of the record in this matter has revealed that RIDEM has not incurred any additional or extraordinary costs during the investigation, enforcement, and resolution of this enforcement action (excluding non-overtime personnel costs), for which the State is not otherwise reimbursed.

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$20,000

PENALTY MATRIX WORKSHEET

CITATION: Wetland Alterations to the Swamp and Floodplain – Fact C(3)(a)

VIOLATION NOs.: D (1) and D (2)

TYPE		
<u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.
DEVIATION FROM THE STANDARD THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondent cleared, stumped, filled (in the form of at least soil material, gravel material, tree debris, and rocks), graded, excavated, directed water into and out of, and created surface disturbance within Swamp and Floodplain on the Property. The severity of the alterations to the wetland environment was determined to be of major importance to the regulatory program. (2) Environmental conditions: The Swamp and Floodplain on the Property were largely undisturbed at the time Respondent acquired the Property. The Swamp east of the dwelling has changed over time from a forested Swamp with a river (Hemlock Brook) running through it to a dead-standing Swamp. The change is likely due to beaver activity (recent evidence of such was observed by RIDEM). (3) Amount of the pollutant: Considered, but not utilized for this calculation. (4) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation. (5) Duration of the violation: Full duration unknown – at least approximately 4 months. RIDEM first became aware of the alterations on 8 March 2022 when RIDEM inspected the Property. (6) Areal extent of the violation: Approximately 23,500 square feet of freshwater wetland. <p style="text-align: right;">(continued)</p>		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent did not take reasonable and appropriate steps to prevent the noncompliance. The Property is surrounded by standing water, and even someone without expertise in freshwater wetlands should know that freshwater wetlands may be present. In Respondent's 2 July 2022 letter, he states that the land was *largely dry* (emphasis added) prior to his purchase and "...not until sometime after I purchased the property that beavers had built a dam and blocked the flow of water that the water started to back up to a higher level...". RIDEM's review of aerial photographs from 1981 to present revealed that the Swamp was always present. Respondent did not apply for a permit or even inquire whether a permit was required. Also, Respondent continued to work in freshwater wetlands after RIDEM's inspector informed Respondent on 8 March 2022 and 11 March 2022 to cease further activities within the freshwater wetlands, and Respondent failed to install all SES controls required (some were installed) to prevent further impacts to the wetlands despite being told to do so during each inspection. Respondent also refused to sign the C&D. Upon information and belief, Respondent has not taken any steps to mitigate the noncompliance. In Respondent's 2 July 2022 letter submitted in response to the NIE, Respondent requested a meeting to discuss reasonable alternatives to resolve the matter. RIDEM responded in writing with the information necessary to request a meeting; however, as of the date of the NOV, Respondent has not requested a meeting or further contacted RIDEM.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the project, and the violation was foreseeable.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The FWW Act allows RIDEM to assess a penalty for each separate and distinct violation up to a maximum of \$10,000 for violations that are knowing or reckless. RIDEM could have assessed a separate penalty for the additional alterations that were observed on 7 April 2022 from the prior inspection on 11 March 2022; however, RIDEM decided not to do so.

<u> </u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000 \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500

PENALTY MATRIX WORKSHEET

CITATION: Wetland Alterations to the PW and Floodplain – Fact C(3)(b)

VIOLATION NOS.: D (1) and D (2)

TYPE		
<p style="text-align: center;"><u> X </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p style="text-align: center;">___ TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p style="text-align: center;">___ TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.</p>
DEVIATION FROM THE STANDARD		
<small>THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondent cleared, stumped, filled (in the form of at least soil material, gravel material, tree debris, and rocks), graded, excavated, built a rock retaining wall, and created surface disturbance within PW and Floodplain on the Property. The severity of the alterations to the wetland environment was determined to be of major importance to the regulatory program. (2) Environmental conditions: Prior to the unauthorized alterations, the PW and Floodplain on the Property were mostly naturally vegetated. The remaining non-vegetated portions were maintained areas surrounding the house and driveway that had been kept in generally that condition since the house was built in the 1980’s. (3) Amount of the pollutant: Considered, but not utilized for this calculation. (4) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation. (5) Duration of the violation: Full duration unknown – at least approximately 4 months. RIDEM first became aware of the alterations on 8 March 2022 when RIDEM inspected the Property. (6) Areal extent of the violation: Approximately 12,500 square feet of freshwater wetland. 		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent did not take reasonable and appropriate steps to prevent the noncompliance. The Property is surrounded by standing water, and even someone without expertise in freshwater wetlands should know that freshwater wetlands may be present. In Respondent's 2 July 2022 letter, he states that the land was *largely dry* (emphasis added) prior to his purchase and "...not until sometime after I purchased the property that beavers had built a dam and blocked the flow of water that the water started to back up to a higher level...". RIDEM's review of aerial photographs from 1981 to present revealed that the Swamp was always present. Respondent did not apply for a permit or even inquire whether a permit was required. Also, Respondent continued to work in freshwater wetlands after RIDEM's inspector informed Respondent on 8 March 2022 and 11 March 2022 to cease further activities within the freshwater wetlands, and Respondent failed to install all SES controls required (some were installed) to prevent further impacts to the wetlands despite being told to do so during each inspection. Respondent also refused to sign the C&D. Upon information and belief, Respondent has not taken any steps to mitigate the noncompliance. In Respondent's 2 July 2022 letter submitted in response to the NIE, Respondent requested a meeting to discuss reasonable alternatives to resolve the matter. RIDEM responded in writing with the information necessary to request a meeting; however, as of the date of the NOV, Respondent has not requested a meeting or further contacted RIDEM.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the project, and the violation was foreseeable
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The FWW Act allows RIDEM to assess a penalty for each separate and distinct violation up to a maximum of \$10,000 for violations that are knowing or reckless. RIDEM could have assessed a separate penalty for the additional alterations that were observed on 7 April 2022 from the prior inspection on 11 March 2022; however, RIDEM decided not to do so.

<u>X</u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000 \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500